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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,764	01/14/2004	Per Egnelov	030481-0213	1513
22428 7590 04/04/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
TYSON, MELANIE RUANO				
ART UNIT		PAPER NUMBER		
3773				
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04/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/756,764

Applicant(s)

EGNELOV ET AL.

Examiner

Melanie Tyson

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-28 is/are rejected.
- 7) ☒ Claim(s) 6-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This action is in response to Applicant's amendment received on 28 February 2007.

Response to Arguments

1. Applicant's arguments with respect to claims 1-5 and 10-18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 20, 21, 25, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 20, 21, 25, and 26 recite structural limitations for the outer and inner members, however, the outer and inner members have not been positively recited in claims 1 and 22. Therefore, it is unclear as to whether the inner and outer members are part of the claimed invention. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 and 12-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Nash et al. (5,411,520). Nash discloses a closure device (see entire document)

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comprising an insertion tool having and actuator (consisting of a head portion 112, a mechanism 140, and a slider 100) operable in a first mode for deployment of an inner member (for example, see Figure 20) and in a second mode for tamping an outer member (for example, see Figure 21), a housing (consisting of portions 28 and 28A) arranged for guidance of a seal assembly, a sleeve (104) received in the housing and positioned over the distal end of the actuator (of slider portion 100), a seal assembly (consisting of inner seal member 32, outer locking member 30, pusher 36', and tamping tube 130) operatively connected to the slider (100), and the step of pulling a filament so as to set the actuator from the first mode to the second mode (for example, see Figures 20-25).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nash et al. in view of Kensey et al. (2001/0003158 A1). Nash discloses a device as described above, however, fails to disclose separate passageways for the seal assembly and a guiding member. Kensey discloses a closure device (see entire document). Kensey teaches a housing (28') having separate passageways (for example, see Figure 32) that converge at the distal end. It is well within the general knowledge of one having ordinary skill in the art to use a known technique to improve similar devices in the same way. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to incorporate separate passageways as taught by Kensey in the device of Nash. Doing so would provide the advantage of separate lumens, which would enable one to simultaneously utilize the guiding member and seal assembly by reducing the possibility of entanglement or knotting between the two.

9. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nash et al. Nash fails to disclose a first actuator for deployment of the inner member and a second actuator member for tamping the outer member. However, the applicant discloses in the specification that either a single integral actuator may deploy the inner member and tamp the outer member, or separate actuators may be utilized. It would have been an obvious matter of design choice to utilize a first and second actuator, since applicant has not disclosed that utilizing separate actuators solves any stated problem or is used for any particular purpose and it appears that the invention would perform equally well with a single actuator.

Allowable Subject Matter

10. Claims 6-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Thursday 8:30-7 (max flex).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./
Examiner, Art Unit 3773
March 20, 2008

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773